

## REMARKS

### **I. Introduction**

Claims 13-25 are pending in the present application. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

### **II. Rejection of Claims 13-25 Under 35 U.S.C. § 102(e)**

Claims 13-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,721,334 (“Ketcham”). Applicants respectfully submit that this rejection should be withdrawn for the following reasons.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim feature. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed feature is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every feature of the claimed subject matter, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim features be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter, as explained above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 13 recites a method of effective utilization of data packets of differing capacity, which method includes, in relevant parts, “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame **according to an agreement between the master station and at least one of the**

**subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets, the control data packets which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe being adapted to a format of the user data packets.”** Independent claims 24 and 25 recite substantially corresponding features.

Before discussing the detailed differences between the claimed invention and the disclosure of Ketcham, Applicants will briefly discuss the conceptual differences between the claimed invention and the subject matter of Ketcham. While Ketcham uses aggregate packets (each of which includes at least two packets) to reduce time delays due to contention periods, the present invention facilitates transmission of a large amount of control information more efficiently. Normally, control data is transmitted at the beginning of a frame with only a small slot capacity (short data packets), so it is normally necessary to use several frames to transmit more control data. The present invention addresses this issue by providing that unused capacity of containers assigned for user data packets may be filled with control data packets. However, this arrangement requires an agreement between a master station and the subscribers regarding which containers normally assigned for user data packets are filled with control data packets. By identifying which containers normally assigned for user data packets are filled with control data packets, it is ensured that control data packets contained in the containers for user data packets are properly interpreted as control data, and not as user data. There is simply no suggestion of this arrangement in Ketcham, as explained in further detail below.

In support of the rejection of claim 13, the Examiner contends that Ketcham teaches “filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame (col. 2, lines 61-67) according to an agreement between the master station and at least one of the subscribers (col. 3, lines 14-21), the agreement stipulating which of the containers for the user data packets are filled with control data packets, the control data packets which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe adapted to a format of the user data packets (col. 3, lines 1-6).” (Final Office Action, p. 2-3). Applicants respectfully submit that the actual disclosure of Ketcham clearly fails to teach or suggest the Applicants’ claimed features, as explained in detail below.

Initially, with respect to the claimed feature of “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame,” Applicants note that the Ketcham’s disclosure has nothing to do with this feature. While the Examiner cites column 2, lines 61-67 of Ketcham as disclosing the above-recited claimed feature, this cited section merely states that the “aggregate packet can include more than just two packets,” and the “number of packets embedded in an aggregate packet is limited primarily by the maximum packet size on the packet-based network.” Indeed, Ketcham merely provides for aggregating two or more individual packets 118-124 and transmitting the aggregate packet, instead of transmitting individual packets 118-124 separately. (See col. 1, l. 61-67; col. 2, l. 30-33 and 36-41). While Ketcham states that packet 122 is data information packet and packet 124 is control information (col. 1, l. 37-38), there is absolutely no suggestion of “filling at least some **containers for the user data packets** each with a plurality of **control data packets**.”

In an effort to remedy the above-noted deficiency of the teachings of Ketcham, the Examiner contends in the “Response to Arguments” section of the final Office Action that “Ketcham discloses filling aggregate packets which can be considered user packets or any type of packet (col. 2, l. 61-67) with different types of packets including control packets (Fig. 4, element 124), [and] the **idea of a user packet can describe any type of packet**, so [Ketcham] teaches combining packets into a container or frame that gets sent over a network, which meets the limitation of filling a user packet with control packets and sending them over the network.” (Final Office Action, p. 7). However, the above-noted contention by the Examiner contains several critical flaws. First, to the extent the Examiner states that the disclosure of Ketcham “meets the limitation of **filling a user packet with control packets** and sending them over the network,” the Examiner is clearly ignoring the actual claim language: claim 13 clearly recites “filling . . . **containers for the user data packets**,” and there is simply no suggestion in Ketcham of any “**containers for the user data packets**.” Second, to the extent the Examiner contends that “**the idea of a user packet can describe any type of packet**,” this interpretation is clearly incorrect for the purposes of the present anticipation analysis. Applicants note that the long-standing rule of claim interpretation is that the **broadest reasonable interpretation** of the claims must also be **consistent with the specification and the interpretation that those skilled in the art would reach**. (See M.P.E.P. 2111, citing In re Hyatt, 211 F.3d 1367 (Fed. Cir. 2000), and In

re Cortright, 165 F.3d 1353 (Fed. Cir. 1999)). In addition, Applicants note that even if one applied the Federal Circuit cases most favorable to the Examiner's position, "the inventor's written description of the invention, for example, is relevant and controlling insofar as it provides clear lexicography," C. R. Bard Inc. v. United States Surgical Corp., 73 U.S.P.Q.2 d 1011, 1014 (Fed. Cir. 2004), which rule is clearly consistent with another long-standing rule that "Applicant may be his or her own lexicographer as long as the meaning assigned to the term is not repugnant to the term's well known usage." The Applicants' specification clearly indicates that the term "user data packet" does not describe any type of packet, in contrast to the Examiner's assertion; instead, Applicant's specification clearly distinguishes between "user data packet" and "control data packet." In particular, the specification indicates that "user data packet" refers to a data packet having "user data NF" and "a short header field KF containing data (e.g., sequence number and error correction bits) belonging directly to the container contents." (Original Specification, p. 4, l. 25-32). The specification distinguishes the "user data packet" from "control data packet," which contains control information. (Original Specification, p. 4, l. 23-25). When properly viewed in light of Applicants' specification, there is no reasonable basis for the Examiner's interpretation that the claimed "user data packet" can describe any type of packet.

Independent of the above, nothing in Ketcham even remotely suggests that any "filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame" is performed "**according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets.**" While the Examiner cites column 3, lines 14-21 of Ketcham as teaching that the filling of the containers is performed "**according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets,**" the cited section merely indicates "determining which network devices support aggregate packets." The fact that individual data packets 118-124 may be aggregated has nothing to do with the above-recited claimed feature of "**an agreement between the master station and at least one of the subscribers . . . stipulating which of the containers for the user data packets are filled with control data packets.**" In fact, the only "agreement" disclosed in Ketcham relates to the **time delay** between sending of a probe packet and receiving of a response packet, i.e., Ketcham merely

tests whether this time delay is shorter than a predetermined response period, in which case aggregate packets are supported. (See, e.g., col. 3, l. 13-20; col. 5, l. 5-18). This alleged “agreement” has absolutely nothing to do with the claimed “agreement between the master station and at least one of the subscribers, the **agreement stipulating which of the containers for the user data packets are filled with control data packets.**”

In an effort to remedy the above-noted deficiency of the teachings of Ketcham, the Examiner contends in the “Response to Arguments” section of the final Office Action that col. 4, l. 37-63 of Ketcham “shows that the master subscriber checks to see if the node can accept that certain type of packets, or whether single nodes have been given the ability to send and accept these aggregate packets, this is the same as agreeing on the ability to send these packets and setting up a connection between two router which have the ability and knowledge how to handle these packets, those router have agreed on the standard of transmission of aggregating and de-aggregating packets.” (Final Office Action, p. 8). However, the Examiner’s assertions are not only pure speculation, but completely ignore the actual claim limitations. The only statements in the cited section of Ketcham that are even remotely relevant to the claimed feature at issue are that “the router 308 will determine whether any hosts on the route support aggregate packets,” and that “[u]ntil a route is set up for aggregate packets, the router forwards the packets normally.” However, these statements simply do not support the Examiner’s conclusion that the claimed feature of “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame” is performed “**according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets.**” To the extent the Examiner may be relying on the doctrine of inherent disclosure, there is simply no “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.”

In addition to, and independent of, the above, nothing in Ketcham even remotely suggests “the **control data packets** which are stored in the containers for the user data packets being **combined in a subframe, an external format of the subframe adapted to a format of the user data packets.**” While the Examiner cites column 3, lines 1-6 of Ketcham as teaching this claimed feature, the cited section merely indicates that “each aggregate packet includes a fixed size table that describes the location and size of the

embedded packets.” The fact that the aggregate packet includes a table describing the location of the component packets has nothing to do with “the **control data packets** which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe adapted to a format of the user data packets.” To the extent the Examiner contends in the “Response to Arguments” section of the final Office Action that “Ketcham discloses a format for combining different type of packets including control packets into an aggregate packet which is considered one complete packet while being transported over the network (Figure 7), which shows that there are subframes combined into the container,” Applicants respectfully submit that the Examiner is once again ignoring the actual claim language: there is simply no suggestion in Ketcham that any “**control data packets** which are stored in the containers for the user data packets” are “**combined in a subframe,**” let alone that “**an external format of the subframe [is] adapted to a format of the user data packets.**”

In view of the foregoing, it is respectfully submitted that Ketcham completely fails to anticipate claim 13 and its dependent claims 14-23, as well as claims 24 and 25 which recited features substantially corresponding to the above-discussed features of claim 13. Accordingly, it is respectfully requested that the anticipation rejection of claims 13-25 be withdrawn.

### CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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Dated: March 16, 2006

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